

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD JEFFERY KINT,

Petitioner,

vs.

CASE NO. 06-14186
HON. LAWRENCE P. ZATKOFF

CAROL HOWES,

Respondent.

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, proceeding *pro se*, filed an application for a writ of habeas corpus (Docket #1). This matter is currently before the Court on Magistrate Judge Virginia Morgan's Report and Recommendation regarding the application for writ of habeas corpus (Docket #42), in which the Magistrate Judge recommends that Petitioner's application for the writ of habeas corpus be denied.¹

After a thorough review of the court file, the Report and Recommendation, and the Petitioner's objections to the Report and Recommendation,² this Court will adopt the Report and Recommendation prepared by Magistrate Judge Morgan and enter it as the findings and conclusions of this Court. In addition, the Court briefly addresses the issues raised by Petitioner in his objections to the Report and Recommendation (Docket #44), as follows.

Petitioner first asks that his Motion to Expedite be dismissed, which the Court will do by denying the motion. Second, Petitioner asks that his Motion to Stay be granted while he files the unexhausted issues in the Michigan court system. As set forth in the Report and Recommendation, however, the only issue before the Court in this case is one that has been exhausted. As such, this is not a mixed petition of exhausted and unexhausted claims. Nonetheless, Petitioner chose to

¹Petitioner also filed a Motion to Expedite (Docket #6) and a Motion to Stay his petition (Docket #12). Magistrate Judge Morgan also recommended denying those Motions.

²The Court GRANTS Petitioner's request for an enlargement of time to object to the Magistrate Judge's Report and Recommendation (Docket #45).

proceed even though he knew that there may be additional claims later. For these reasons, the Court will deny the Motion to Stay his petition. Third, Petitioner reiterates his argument that he tried to withdraw his plea to the assault charge because he didn't know that the crime to which he plead guilty included a charge for escape. As the Magistrate Judge stated, a violation of state law is not a basis for habeas corpus relief. In his objections, there are two arguable positions that Petitioner asserts: (1) that the plea was not knowing, intelligent and voluntary, and (2) his counsel was ineffective. After reviewing the record, the Court is convinced that Petitioner's plea was knowingly, intelligently and voluntarily given. Petitioner's arguments regarding ineffective assistance of counsel are not appropriately before this Court as the issue has not been exhausted in state court.

Therefore, for the reasons stated above, Petitioner's application for a writ of habeas corpus (Docket #1) is DENIED. Likewise, Petitioner's Motions to Expedite (Docket #6) and Motion to Stay (Docket #12) are DENIED. Judgment shall be entered accordingly.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: September 19, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on September 19, 2007.

s/Marie E. Verlinde
Case Manager
(810) 984-3290